FILED
NOV 9 1993
OFFICE OF THE CLERK

No. 93-617

In The

Supreme Court of the United States

October Term, 1993

WILLIE J. DUNN,

Petitioner,

versus

WILMA D. SIMS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Alabama

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

CHARLES P. GAINES
Counsel of Record

GAINES, GAINES, GAINES
& RASCO, P.C.
Post Office Box 275
Talladega, Alabama 35160
(205) 362-2386

Counsel for Respondent,
Wilma D. Sims

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

BEST AVAILABLE COPY

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

QUESTIONS PRESENTED

Was there a misapplication of the law or were Petitioner's rights to procedural due process violated when the Supreme Court of Alabama concurred with the trial court's order enforcing a settlement agreement between the parties?

TABLE OF CONTENTS

Page

Question Presented i

Table of Authorities iii

Opinions Below 1

Jurisdiction 1

Statement of the Case 2

Summary of Reasons for Denying the Writ 5

Reasons for Denying the Writ 6

Conclusion 8

Appendix A-1

TABLE OF AUTHORITIES

Page

CASES

Logan v. Zimmerman Brush Company, 455 U.S. 422, 102 S.Ct. 1148 (1982) 6

Spurlock v. Pioneer Financial Services, Inc., 808 F. Supp. 782 (MD Ala. 1992) 6

STATUTES

Section 34-3-21, *Code of Alabama* (1978) ..... *passim*

28 U.S.C. Section 1254(1) 1

28 U.S.C. Section 1257 1

OPINIONS BELOW

The order of the Circuit Court of Talladega County, Alabama enforcing the settlement agreement between Petitioner and Respondent is reproduced as Appendix C to Petitioner's (hereinafter "Mr. Dunn") Petition for a writ of certiorari. The decision of the Supreme Court of Alabama granting the Respondent's writ of certiorari and finding the settlement agreement was due to be enforced is reproduced as Appendix A to Mr. Dunn's Petition for a writ of certiorari. The Supreme Court of Alabama's decision denying Mr. Dunn's application for rehearing is reproduced as Appendix G to his petition for writ of certiorari.

The order affirming the order from the Circuit Court of Talladega County entered by the Alabama Court of Civil Appeals is reproduced as Appendix I to Mr. Dunn's Petition for a writ of certiorari.

JURISDICTION

The Petition for a writ of certiorari was filed by Mr. Dunn within ninety (90) days of the date the application for rehearing was denied. Mr. Dunn erroneously invokes the jurisdiction of this court pursuant to Section 28 U.S.C. Section 1254(1). The lower court's decision is not from a court of appeals but was a judgment rendered by the Supreme Court of Alabama. This court's jurisdiction is found under 28 U.S.C. Section 1257.

STATEMENT OF THE CASE

I

Introduction

Mr. Dunn's Petition arises out of an Order enforcing a settlement agreement between the respondent Wilma Sims ("Sims") and Mr. Dunn individually and as administrator of the Estate of Lelia P. Dunn. Mr. Dunn's petition is filed only on his behalf. Sims moved for an Order enforcing a written settlement agreement between the parties and after a hearing on the motion, the trial court granted Sims' motion enforcing the settlement agreement. On appeal, the Alabama Court of Civil Appeals reversed the trial court however the Supreme Court of Alabama, after reviewing the evidence submitted to the trial court and briefs by both parties as well as the amicus curiae brief of Pioneer Financial Services, Inc., determined that the Court of Civil Appeals misapplied the law pertaining to settlement agreements. In so doing, the Supreme Court of Alabama found the settlement agreement between petitioner and respondent did comply with the provisions of Alabama *Code* Section 34-3-21 and was therefore due to be enforced. The Court of Civil Appeals was reversed and the cause remanded with instructions to enter the appropriate order enforcing the settlement agreement. Mr. Dunn filed an application for rehearing claiming denial of due process and equal protection rights and a misapplication of the law. The Supreme Court of Alabama reconsidered the issues raised by Mr. Dunn and in denying his application for rehearing, rejected his arguments that his due process and equal protection rights had been violated or that there had been a misapplication of the law.

The basic facts confirming the existence of a settlement agreement are not in dispute and a review of these facts confirms the issue of whether the agreement was enforceable was presented before the trial court where Mr. Dunn had a full opportunity to present the arguments now raised in his petition for a writ of certiorari. A factual review confirms the Supreme Court of Alabama's decision finding the settlement agreement met the requirements of Section 34-3-21, *Code of Alabama* (1975) and was due to be enforced was correct.

II

UNDERLYING FACTS

Mr. Dunn was involved in an automobile accident with Sims in 1983. Prior to the trial of this case Mr. Dunn and his attorneys negotiated a settlement with Sims' attorney and reduced that agreement to writing. The settlement agreement was signed by Dunn and both of his attorneys. During the course of negotiations Mr. Dunn was represented by his two attorneys. He was present with his attorney conducting negotiations on his behalf, directly participated in those negotiations and was fully aware of the terms of the settlement. An attorney for Mr. Dunn drafted a settlement agreement which provided Sims would pay $6,200.00 to Dunn and $300.00 to his mother. Mr. Dunn then executed that agreement along with his attorneys. The trial court was advised a settlement had been reached and the scheduled trial was cancelled. Shortly thereafter Dunn refused to be bound by the settlement agreement and shortly thereafter, both of Dunn's attorney's withdrew as Mr. Dunn's counsel and

were awarded attorney's liens to collect their fees claimed under the settlement agreement.

III

PROCEDURAL HISTORY OF THE CASE

Ms. Sims filed a motion seeking enforcement of the settlement agreement. After a lengthy hearing on the motion to enforce the settlement agreement, the trial court found an agreement for settlement of the case had been reached between the attorneys for the parties, Mr. Dunn was fully aware of the terms of the settlement, the settlement agreement was reduced to writing and was executed by Mr. Dunn individually and as administrator of his mother's estate. The court further found the attorneys for the parties advised the court the case had been settled and the scheduled trial was cancelled. The trial court found the settlement agreement was due to be enforced and directed Sims to pay the settlement proceeds to the Circuit Clerk of the Court. The settlement proceeds were paid pursuant to the trial court's Order.

After the motion for enforcement of the settlement agreement was granted, Mr. Dunn filed motions seeking reconsideration and other relief which were denied by the trial court. Mr. Dunn filed a notice of appeal to the Alabama Court of Civil Appeals which reversed the trial court's ruling enforcing the settlement agreement. Ms. Sims' application for rehearing to the Court of Civil Appeals was denied. Ms. Sims petition for a writ of certiorari to the Supreme Court of Alabama was granted and that court found the settlement agreement did meet the requirements of Section 34-3-21, *Code of Alabama*

(1975) and was due to be enforced. The judgment of the Court of Civil Appeals was reversed and the cause remanded with instructions to enter an appropriate order. Mr. Dunn's application for rehearing to the Supreme Court of Alabama was denied. The Alabama Court of Civil Appeals set aside its judgment, affirmed the judgment from the trial court in the Circuit Court of Talladega County, Alabama and adopted the opinion rendered by the Supreme Court of Alabama.

In his application for rehearing to the Supreme Court of Alabama, Mr. Dunn presented the same argument he now presents to this court in his petition for a writ of certiorari. Mr. Dunn argued that his rights to due process and equal protection had been violated and there had been a misapplication of the law relative to the enforcement of settlement agreement. The Court rejected the same arguments Mr. Dunn makes to this Court by denying the application for rehearing and confirming the trial court's finding the settlement agreement was due to be enforced.

SUMMARY OF REASONS FOR DENYING THE WRIT

The petition should be denied because Mr. Dunn's right to due process and equal protection has not been violated in this case. Mr. Dunn received the requisite process necessary to satisfy all constitutional requirements of due process and equal protection. The petition should also be denied because the Supreme Court of Alabama properly found Section 34-3-21 did govern settlement agreements reached at the trial level and the

settlement agreement between Mr. Dunn and Sims met all requirements for a valid agreement. Additionally, this case was reviewed by the Honorable Ira DeMent, United States District Judge in *Spurlock v. Pioneer Financial Services*, 808 F. Supp. 782 (MD Ala. 1992) and Judge DeMent specifically found Section 34-3-21 does control the making of settlement agreements which are entered into before the case is appealed. In its decision finding the agreement was enforceable, the Supreme Court of Alabama specifically referred to Judge DeMent's ruling and agreed with his interpretation on that issue.

REASONS FOR DENYING THE WRIT

I.

Mr. Dunn's right to due process and equal protection has not been violated in this case. The right to due process under the Fourteenth Amendment of the United States Constitution requires that some form of a hearing is necessary before an owner is deprived of a protective property interest. *Logan v. Zimmerman Brush Company*, 455 U.S. 422, 102 S. Court 1148 (1982). Mr. Dunn was provided several hearings at the trial court level as a result of numerous pleadings he filed on his behalf. At the hearing for the respondent's motion to enforce the settlement agreement Mr. Dunn was allowed the opportunity to cross-examine witnesses and present his arguments to the trial court. Mr. Dunn had advance notice of the hearing and was present and given an opportunity to be heard. His "property interest" i.e. his cause of action, was not taken away without notice and the opportunity to be

heard. In addition to having his day in court at the trial level, Mr. Dunn had the opportunity and exercised his right to present his case to the Alabama Court of Civil Appeals. He again had the opportunity and exercised his right to present his arguments to the Supreme Court of Alabama which granted the respondent's petition for writ of certiorari. Mr. Dunn then had another opportunity and in fact did present the same arguments to the Supreme Court of Alabama that he is making here and that court rejected those arguments. Mr. Dunn's rights to due process and equal protection have not been violated in this case.

II.

Another reason for denying Mr. Dunn's petition is that the Supreme Court of Alabama properly applied the law which governs enforcement of settlement agreements. Section 34-3-21, *Code of Alabama* (1975) provide: "An attorney has authority to bind his client in any action or proceeding, by any agreement in relation to such case, made in writing, or by an entry to be made on the minutes of the Court." It is undisputed and even Mr. Dunn admits, a settlement agreement negotiated by his attorneys with Sims was reached, reduced to writing and signed by Mr. Dunn and both of his attorneys. (App. A) The trial court and the Supreme Court of Alabama found the agreement met the requirements of Section 34-3-21 and was due to be enforced. This issue and this case were reviewed by Judge Ira DeMent, United States District Judge in the Middle District of Alabama who was faced with a similar issue. Judge DeMent specifically found Section 34-3-21 governs settlement agreements reached

while a case was at the trial level. In agreeing with Judge DeMent, the Supreme Court of Alabama specifically noted there was some confusion among the bench and bar relative to settlement agreements and specifically took the opportunity in this case to guide the bench and bar in future cases on this subject. Section 34-3-21 governs settlement agreements reached at the trial level and the agreement between petitioner and respondent was binding and due to be enforced.

CONCLUSION

The law regarding settlement agreements was properly applied. Mr. Dunn's rights to due process have not been violated in this case. He has exercised several opportunities to present the arguments he presents to this Court and although those arguments against enforcement of the agreement have been disjointed and difficult to follow, they have nevertheless been presented and reviewed on several occasions. Unfortunately for Mr. Dunn, the Supreme Court of Alabama confirmed Sims was entitled to enforcement of the settlement agreement. Mr. Dunn entered into a valid agreement with Sims and regardless of what reasons he now wishes not to be bound by that agreement, he is bound by it. Being required to honor a valid agreement is not a violation of Fourteenth Amendment rights to due process or equal

protection. Accordingly, the petition for writ of certiorari should be denied.

Respectfully submitted,

/s/ Charles P. Gaines
CHARLES P. GAINES
GAINES, GAINES, GAINES
& RASCO, P.C.
127 North Street
Talladega, Alabama 35160
(205) 362-2386

Attorney for Defendant,
Wilma Sims

APPENDIX A

Wood, Hollingsworth & Willis
Attorneys and Counselors at Law
Post Office 801 494
117 East Street North
Talladega, Alabama 35100
Telephone 306/342-0811

May 25, 1990

B. Greg Wood
William E. Hollingsworth, III
Jeffrey A. Willis

James H. Sharbutt
Retired Circuit Judge
Of Counsel

SETTLEMENT AGREEMENT

WILLIE J. DUNN, etc., et al.,

VS.

WILMA SIMS

This case settled this date as follows:

Claim of Leila P. Dunn	$ 300.00
Claim of Willie J. Dunn and Susan Dunn	6200.00

Settlement amounts are inclusive of Court Cost, deposition cost and all expenses of the case.

Attorneys' fee will be 30% of the above amounts. Attorneys waive their out of pocket expenses to date. Charges of Dr. Vincent for deposition, if charged, will be paid by Willie J. Dunn.

The amounts to be reimbursed for clients' share will be:

To Estate of Leila Dunn:	$ 210.00
To Willie J. Dunn and Susan Dunn:	4340.00

AGREED this 25th day of May, 1990.

/s/ Willie J. Dunn
Willie J. Dunn,
individually and as
Administrator

/s/ Greg Wood
B. Greg Wood

/s/ Paul A. Phillips
Paul A. Phillips